1946

File No. B. Cr. P.C. /46.

K

Legal DEPARTMENT

B BRANCH

P 30(2)/1946

Subject:—

A Bill to amend the Code of Criminal Procedure 1898 in its application to the Province of Bombay

L. A. Bill no XVII of 1946.

Bom. Act. no XXX of 1946

File No. B. Cr. P.C. /46.

Std. Sectt. Slip 24 B-a.

523-B.

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G.A.K.
15-5
5 copies

28/6

Progress sheet.

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IV.	Bill published on _____	26-8-46
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VI.	10 copies of S.C's report or/and copies as passed by the L.A./L.C. together with extracts of proceedings in L.A./L.C. sent to the Government of India, Legislative Department, on	_____
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S.A.K.
15-5
4 copies

A revised draft Bill is sent herewith.

2. The Bill requires the previous sanction of the Governor under section 108(2)(ii) of the Government of India Act, 1935. It does not require any recommendation or affect any of his special responsibilities. The subject-matter of the Bill falls under entries 2 and 3 in List II and entry 2 in List III in the Seventh Schedule to the said Act. As the Bill does not contain any provision repugnant to the provisions of any earlier Central law or existing Indian law with respect to any of the matters enumerated in the Concurrent Legislative List, it will not be necessary to reserve it for the consideration of the Governor General with reference to section 107(2) of the Constitution Act.

3. A revised Statement of Objects and Reasons is also sent herewith.

O.O Sd/- P.N. Menon.
23-7-46

Remembrancer of Legal Affairs.

U.D. to H.D. No. 322-L , dated the 26th July 1946.

S.A.E.
15-9
4 copies

BILL NO. of 1946.

A Bill to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay.

WHEREAS it is expedient to amend the

V of 1898. Code of Criminal Procedure, 1898, in its application to the Province of Bombay for the purpose hereinafter appearing; It is hereby enacted as follows:-

Short title. 1. This Act may be called the Code of Criminal Procedure (Bombay Amendment) Act, 1946.

Amendment of section 528 of Act V of 1898. 2. In section 528 of the Code of Criminal Procedure, 1898, in its application to the Province of Bombay, for sub-section (6) the following sub-section shall be substituted, namely:-

"(6) For the purposes of this section, a Police-patel appointed under section 5 of the Bombay Village Police Act, 1867, shall be a Magistrate subordinate to the District Magistrate."

Bom. VIII of 1867.

S.A.K.
15-5
4 copies

STATEMENT OF OBJECTS AND REASONS.

Sections 14,15, and 16 of the Bombay Village Police Act, 1867, empower the Police-patel to try and punish persons for certain petty offences. There is, however, no provision in the Village Police Act or the Code of Criminal Procedure, 1898, empowering the District Magistrate to transfer a case pending before a Police-patel to any Magistrate subordinate to him. The Bill is intended to confer the necessary powers on the District Magistrate.

S.A.I.
15-5
4 copies

IMMEDIATE. Home Department.

Note to Honourable Ministers.

A special Anti-Corruption staff of the police has recently been established both in the mofussil and in Bombay city. In order to enable this staff to do its work as efficiently and as secretly as possible, a proposal was considered by the Council of Ministers on July 5th to make sections 161, 162, 163, 164 and 165 of the Indian Penal Code cognisable. These are offences of bribery by public servants and allied offences. Such a step would obviate the necessity for a formal request by a police officer to a magistrate of the first or second class under section 155(2) of the Criminal Procedure Code for permission to investigate these offences, and would thus eliminate waste of time and one possible source of leakage of information.

2. The Council of Ministers at its meeting of July 5th decided not to proceed with this legislation, but instead to appoint Police Officers of the Anti-Corruption establishment down to sub-Inspector by name to be magistrates for the purpose of section 15 of the Criminal Procedure Code.

3. Subsequently an objection was raised to this proposal that it would be undesirable in principle to invest a Police officer not below the rank of sub-Inspector with restricted magisterial powers so that as a magistrate he could first sanction investigation into an offence and then proceed as a Police officer to investigate the offence himself. The High Court, who were consulted in the matter, consider that this objection is sound.

4. It is therefore proposed to proceed with the original idea to make sections 161 to 165 of the Indian Penal Code cognisable. For this purpose it is necessary to amend the third column of

S.A.E.
4 copies

of Schedule II of the Criminal Procedure Code. The Provincial Legislature is competent to undertake this; A draft of the Bill will be prepared by the Remembrancer of Legal Affairs in time for the meeting of the Council on the 19th August.

Id/- G.G.D(rews).
14- -46

To

H.P.M.

H.M.(H.& E.).

H.M.(Health).

H.M.(R.C.D.).

H.M.(C.S.D.).

H.M.(F:D.).

H.M.(Labour).

H.M.(Forests).

H.M.(L.S.G.)

H.M. (Industries).

G.S.(for H.E's information).

C.S.

Copy to R.L.A.

S.A.K.
15-5
h copies

Office of the L.A.

The requisite draft Bill to amend the Code of Criminal Procedure is sent herewith.

2. The subject-matter of the Bill falls under entry 2 in List III of the Seventh Schedule to the Government of India Act, 1935. The provisions of clause 3 of the Bill are repugnant to the provisions of the Code of Criminal Procedure which is an existing Indian law with respect to a matter in the Concurrent Legislative List. It will therefore be necessary to reserve the Bill for the consideration of the Governor-General with reference to section 107(2) of the Government of India Act, 1935.

3. The Bill does not require any sanction or recommendation under the Constitution Act.

4. The Home Department will no doubt attach the requisite Statement of Objects and Reasons to the Bill.

5. The Home Department may consider whether this Bill may not be amalgamated with the Bill to amend section 528 of the Code of Criminal Procedure, a draft of which was furnished to the Home Department with L.A.'s Opinion No. 3 2-L, dated the 26th July 1946.

Sd/- P.N.Rees
16-8-46
Secy. Remembrancer of Legal Affairs.

U.O. to H.D.,No. 473-L4 dated the 16th August 1946.

A.Z.
15-8
4 copies

No. 1036-L
Legal Department.

Council Hall, Poona, 27th September 1946.

From

P.N.Moos, Esquire, C.I.E., I.C.S.,
Secretary to the Government of Bombay.

To

The Secretary to the Governor of Bombay.

Subject:- A Bill to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for being presented to His Excellency the Governor, an authentic copy of a Bill to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 3rd and 13th September 1946 respectively.

2. None of the provisions of the Bill affects any special responsibility of the Governor under section 52(1) of the Government of India Act, 1935, or falls within the purview of clause (a).(b).(c).or (d) of paragraph XVII of the Instrument of Instructions to the Governor of Bombay.

3. The subject-matter of the Bill falls under entries 2 and 3 in List II and entry 2 in List III in the Seventh Schedule to the Government of India Act, 1935.

4. The provisions of clause 3 of the Bill are repugnant to the provisions of the Code of Criminal Procedure which is an existing Indian law with respect to a matter in the Concurrent Legislative List. It will therefore be necessary to reserve the Bill for the consideration of the Governor-General with reference to section 107(2) of the Government of India Act, 1935.

5. I am also to forward herewith six copies of each of

S.A.K.
15-9
4 copies

the items Nos. 1 to 3 and two copies of item No. 4 of th e

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	papers not in the margin.
2. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.	The Bill was not referred to a
3. Bill as read for the third time and passed by the Bombay Legislative Council.,	select Committee.
4. Extracts from the proceedings of the Bombay Legislative Assembly dated the 3rd September 1946 and of the Bombay Legislative Council dated the 13th September 1946.	

I have the honour to be,
Sir,
Your most obedient servant,

Sd/- P.H.Koos
21-9-46

O.C. Secretary to the Government of Bombay.
Legal Department.

Through the Secretary to the Government of Bombay,

Home Department

S.A.K.
15-5
4 copies

Submitted after issue

2 The H. D. has already been requested to obtain the orders of Govt. re the application of the proposed Act to the partially excluded areas.

3 Await D.O's consent thereto 10/10

Sd/-
29-9-46

S.A.K.
15-5
4 copies

No. G.S. 3137
Office of the Governor's Secretary
Government House

From

D.Symington, Esquire, C.I.E.I.C.S.
Secretary to the Governor of Bombay

To

The Secretary to the Bombay Legislative Assembly /Council

Ganeshkhind, 1st October 1946.

Subject:- The Code of Criminal Procedure (Bombay Amendment) Bill , 1946.

Sir,

With reference to the above Bill, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council on the 3rd and 13th September 1946 respectively, I am directed to state, for the information of the Hon'ble the President that as the provisions of clause 3 of the Bill are repugnant to the provisions of the Code of Criminal Procedure which is an existing Indian law with respect to a matter in the Concurrent Legislative List, it will be necessary to reserve it for the consideration of His Excellency the Governor-General under section 107(2) of the Government of India Act, 1935. His Excellency the Governor is accordingly pleased, under section 75 of the Act , to declare that he reserves the Bill for the consideration of the Governor-General .

I have the honour to be,
Sir
Your most obedient servant,

Sd/- D.Symington

Secretary to the Governor of Bombay.

No. G.S. 3138
Ganeshkhind, 1st October 1946.

Copy forwarded with compliments to:-

The Secretary to Government, Legal Department, with reference to his letter No. 1036-L dated 27th September 1946. P.S. auth
The Secretary to Government, Home Department, with reference to his endorsement No. 311/5 dated 29th September 1946.

By order of the Governor of Bombay

Sd/-
Secretary to the Governor of Bombay.

D.A.K.
15-5
4 copies

No. G.S., 4315
Office of the Governor's Secretary,
Government House,
Bombay 2nd December 1946.

From

D.Symington, Esquire, C.I.E. , I.C.S.,
Secretary to the Governor of Bombay.

To

The Secretary to Government
Legal Department.

Subject:- The Code of Criminal Procedure
(Bombay Amendment) Bill , 1946.

Sir,

With reference to the correspondence resting with my endorsement No. G.S. 3138, dated the 1st October 1945, on the above subject, I am directed to forward herewith the authentic copy of the Code of Criminal Procedure (Bombay Amendment)Bill, 1946, with His Excellency the Governor-General's assent signified thereon .

Your obedient servant.

Sd/-
Secretary to the Governor of Bombay.

S.A.E.
15-5
4 copies

Office of the R.L.A.

By section 3 of the Code of Criminal Procedure (Bombay Amendment) Act, 1946 (Bom. XXX of 1946) the offences under sections 161 to 165 of the Indian Penal Code have been made cognisable so far as the Province of Bombay is concerned. The Government of India have under consideration the Prevention of Corruption Bill, 1946, at page 3 underwhich the offences under sections 161 and 165 of the Indian Penal Code when investigated by a Police officer not below the rank of a Deputy Superintendent of Police will be cognisable. The question for consideration is whether the Central legislation will affect the provisions made by Bombay Act XXX of 1946.

2. The view taken in H.D. note dated 19th December 1946 at page 13-14 ante is correct.

3. Section 107 of the Government of India Act, 1935, deals with the question of repugnancy of Federal and Provincial legislation in the field of the concurrent list. It is true that Bombay Act XXX of 1946 having been reserved for the consideration of the Governor General prevails in this Province over the earlier Federal law or existing Indian law on the subject. But under the last part of the same section 107(2) the Federal legislature is competent to enact further legislation with respect to the same matter. In view of the provisions of sub-section (1) of section 107 of the Constitution Act, if the provincial law i.e. section 3 of Bombay Act XXX is repugnant to the Federal law subsequently enacted, the Federal law will prevail and the Provincial law to the extent of repugnancy will be void. The proposed Central legislation will therefore override the provision made by Bombay Act XXX of 1946 in respect of offences under sections 161 and 165 of the Indian Penal Code.

Sd/- D.V.Vyas

O.O. Remembrancer of Legal Affairs.

U.R. to H.D.No. 9532 , dated the 30th December 1946.

S.A.K.

15-5 4 copies

Bill.

A Bill to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 532-L
Council Hall, Poona, 24th August 1946

Memorandum from the Home Department No. 311/9-B dated the 24th August 1946.- Transferring for necessary action, the papers relating to a Bill to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay.

RESOLUTION:- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay for publication in the Bombay Government Gazette, dated the 26th August 1946, as Bill No. XVIIIof 1946.

2. The Bill and the Statement of Objects and Reasons should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette on the 26th August 1946.

3. The dates of the various publications should be reported to the Secretary to the Bombay Legislative Assembly.

By order of the Governor of Bombay.

Sd/-

K.H. Chitnvis,

Assistant Secretary to the Government of Bombay,
Legal Department.

To

The Manager, Government Central Press, Bombay (with the Bill and the Statement of Objects and Reasons and with a request that 230 Gazette copies of the Bill and the S.O.R. may be forwarded to the Secretary to the Bombay Legislative Assembly for distribution to the Members of the Bombay Legislative Assembly and 25 copies for the use of the Legal Department).

The Home Department,
The Oriental Translator to Government,
The Secretary to the Bombay Legislative Assembly,
The Director of Information,
With five extra copies of the Bill. } With a copy of the Bill and S.O.R.

S.A.F.
1945 5 Copies

Acts.

Publication of the Code of Criminal Procedure (Bombay Amendment) Act, 1946.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 5722

Bombay Castle, 4th December 1946.

Letter to the Secretary to the Governor, No. 1036-L, dated the 27th September 1946.

Letter from the Secretary to the Governor, No. G.S. 4315, dated the 2nd December 1946.

"With reference to the correspondence resting with my endorsement No. G.S. 3138, dated the 1st October 1946, on the above subject, I am directed to forward herewith the authentic copy of the Code of Criminal Procedure (Bombay amendment) Bill , 1946, with His Excellency the Governor-General's assent signified thereon."

RESOLUTION:- The law should be published as Bombay Act No. XXX of 1946 in the Bombay Government Gazette dated the 4th December 1946

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Home Department with reference to the memorandum from that Department No. 311/5-B dated the 24th August 1946.

By order of the Governor of Bombay,

Sd/- S.V. Kurandhar,

Personal Assistant to the Remembrancer of Legal Affairs.

To

The Manager, Government Central Press, Bombay (with a copy of the Act may be forwarded to the and with a request that 15 Gazette copies of the Act may be forwarded to the Legal Department).
The Home Department.)
*The Oriental Translator to Government.) with a
The Secretary to the Bombay Legislative) copy of
Council,) the Act.
The Secretary to the Bombay Legislative)
Assembly.)
The Director of Publicity, Bombay.)

*With five extra copies.

S.A.K.
15-5
4 copies

L. A. BILL No. XVII OF 1946.

A Bill to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay.

(As read for the third time and passed by the Legislative Assembly on the 3rd September 1946.)

V of 1898.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Code of Criminal Procedure (Bombay Amendment) Act, 1946.

Amendment of section 528 of Act V of 1898.

2. In section 528 of the Code of Criminal Procedure, 1898, hereinafter called the said Code, for sub-section (6) the following sub-section shall be substituted, namely:—

V of 1898.

"(6) For the purposes of this section, a Police-patel appointed under section 5 of the Bombay Village Police Act, 1867, shall be a Magistrate subordinate to the District Magistrate".

Bom. VIII of 1867.

Amendment of Schedule II to Act V of 1898.

3. In Schedule II to the said Code—

(*a*) in the third column in the entry relating to section 161 for the words "Shall not" the word "May" shall be substituted; and

(*b*) in the third column in the entry relating to section 166 for the word "Ditto" the words "Shall not arrest without warrant" shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

Sections 14, 15 and 16 of the Bombay Village Police Act, 1867, empower the Police-patel to try and punish persons for certain petty offences. There is, however, no provision in the Village Police Act or the Code of Criminal Procedure, 1898, empowering the District Magistrate to transfer a case pending before a Police-patel to any Magistrate subordinate to him. Clause 2 of the Bill is intended to confer the necessary powers on the District Magistrate.

2. A special Anti-corruption staff of the Police has recently been appointed both in the mofussil and in Greater Bombay to investigate offences of corruption amongst Government servants. It has had mainly to deal with offences under sections 161, 162, 163, 164 and 165 of the Indian Penal Code which are all non-cognizable offences. It is necessary to make these offences cognizable in order to enable the staff to do its work efficiently, and expeditiously. Clause 3 of the Bill is intended to achieve this object.

24th August 1946. MORARJI DESAI.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XVII OF 1946.]

(As read for the third time and passed in the Legislative Assembly on the 3rd September 1946.)

A Bill to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay.

[Mr. Morarji R. Desai, M.L.A.]

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. XVII OF 1946.

An Act to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay.

(As read for the third time and passed by the Legislative Assembly on the 3rd September 1946.)

(As read for the third time and passed by the Legislative Council on the 13th September 1946.)

V of 1898.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Code of Criminal Procedure (Bombay Amendment) Act, 1946.

V of 1898.

Amendment of section 528 of Act V of 1898.

2. In section 528 of the Code of Criminal Procedure, 1898, hereinafter called the said Code, for sub-section (6) the following sub-section shall be substituted, namely:—

"(6) For the purposes of this section, a Police-patel appointed under section 5 of the Bombay Village Police Act, 1867, shall be a Magistrate subordinate to the District Magistrate".

Bom. VIII of 1867.

Amendment of Schedule II to Act V of 1898.

3. In Schedule II to the said Code—

(*a*) in the third column in the entry relating to section 161 for the words "Shall not" the word "May" shall be substituted; and

(*b*) in the third column in the entry relating to section 166 for the word "Ditto" the words "Shall not arrest without waranrt" shall be substituted.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XVII OF 1946.]

(As read for the third time and passed by the Legislative Assembly on 3rd September 1946.)

(As read for the third time and passed by the Legislative Council on the 13th September 1946.)

An Act to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay.

[Mr. MORARJI R. DESAI, M.L.A.]

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS

L. A. BILL No. XVII OF 1946.

A Bill to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay.

(As published in the "Bombay Government Gazette" of 26th August 1946.)

V of 1898. WHEREAS it is expedient to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay, for the purposes hereinafter appearing; It is hereby enacted as follows:—

Short title. 1. This Act may be called the Code of Criminal Procedure (Bombay Amendment) Act, 1946.

Amendment of section 528 of Act V of 1898. 2. In section 528 of the Code of Criminal Procedure, 1898, hereinafter called the said Code, for sub-section (6) the following sub-section shall be substituted, namely:—

"(6) For the purposes of this section, a Police-patel appointed under section 5 of the Bombay Village Police Act, 1867, shall be a Magistrate subordinate to the District Magistrate".

Bom. VIII of 1867.

Amendment of Schedule II to Act V of 1898. 3. In Schedule II to the said Code—

(*a*) in the third column in the entry relating to section 161 for the words "Shall not" the word "May" shall be substituted; and

(*b*) in the third column in the entry relating to section 166 for the word "Ditto" the words "Shall not arrest without warrant" shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

Sections 14, 15 and 16 of the Bombay Village Police Act, 1867, empower the Police-patel to try and punish persons for certain petty offences. There is, however, no provision in the Village Police Act or the Code of Criminal Procedure, 1898, empowering the District Magistrate to transfer a case pending before a Police-patel to any Magistrate subordinate to him. Clause 2 of the Bill is intended to confer the necessary powers on the District Magistrate.

2. A special Anti-corruption staff of the Police has recently been appointed both in the mofussil and in Greater Bombay to investigate offences of corruption amongst Government servants. It has had mainly to deal with offences under sections 161, 162, 163, 164 and 165 of the Indian Penal Code which are all non-cognizable offences. It is necessary to make these offences cognizable in order to enable the staff to do its work efficiently, and expeditiously. Clause 3 of the Bill is intended to achieve this object.

24th August 1946. MORARJI DESAI.

Government of Bombay.

LEGAL DEPARTMENT

[L. A. BILL No. XVII OF 1946.]

(As published in the "Bombay Government Gazette" of the 26th August 1946.)

A Bill to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay.

[Mr. Morarji R. Desai, M.L.

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

Registered No. B-1

The Bombay Government Gazette

PUBLISHED BY AUTHORITY

WEDNESDAY, 4TH DECEMBER 1946.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV

(1) Acts of the Local Legislature of the Bombay Province and (2) Acts of the Indian Legislature assented to by the Governor General.

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BOMBAY ACT No. XXX OF 1946—An Act to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay 274

The following Act of the Bombay Legislature having been assented to by the Governor-General on the 25th November 1946 is hereby published for general information.

D. V. VYAS,
Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. XXX OF 1946.

(First published, after having received the assent of the Governor-General, in the "Bombay Government Gazette" on the 4th December 1946.)

An Act to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay, for the purposes hereinafter appearing; It is hereby enacted as follows:— V of 1898.

1. This Act may be called the Code of Criminal Procedure (Bombay Amendment) Act, 1946. Short title.

2. In section 528 of the Code of Criminal Procedure, 1898, hereinafter called the said Code, for sub-section (6) the following sub-section shall be substituted, namely:— Amendment of section 528 of Act V of 1898. V of 1898.

"(6) For the purposes of this section, a Police-patel appointed under section 5 of the Bombay Village Police Act, 1867, shall be a Magistrate subordinate to the District Magistrate". Bom. VIII of 1867.

3. In Schedule II to the said Code— Amendment of Schedule II to Act V of 1898.

(a) in the third column in the entry relating to section 161 for the words "Shall not" the word "May" shall be substituted; and

(b) in the third column in the entry relating to section 166 for the word "Ditto" the words "Shall not arrest without warrant" shall be substituted.

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. XVII OF 1946 (A BILL TO AMEND THE CODE OF CRIMINAL PROCEDURE, 1898, IN ITS APPLICATION TO THE PROVINCE OF BOMBAY).

Mr. MORARJI R. DESAI: Sir, I beg to introduce L. A. Bill No. XVII of 1946 (A Bill to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay), as read for the third time and passed by the Legislative Assembly.*

The Hon. the PRESIDENT: The Bill is introduced.

Mr. MORARJI R. DESAI: Sir, I beg to move that L. A Bill No. XVII of 1946 (A Bill to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay) be read a first time.

Question proposed.

Mr. MORARJI R. DESAI: Sir, this Bill can be divided into two parts. The first part, that is clause 2, is meant for removing a difficulty which exists at present. Under the Village Police Act, a Police-Patel has got jurisdiction to try certain cases. But there is no provision to transfer these cases from a Village Police-Patel to ordinary Magistrates or even to other Village Police-Patels. The result is that the same Police-Patel tries the case in which he is interested, with the result that miscarriage of justice takes place. But there is no power at present to transfer such a case to another Police-Patel. That is why power is being taken in this clause to enable Government to transfer a case from a Police-Patel to any other Police-Patel or to any Magistrate.

Clause 3, that is the second part of the Bill, is meant to make cases of corruption cognizable. At present they are non-cognizable under sections 161 to 165 of the Indian Penal Code. But as they are not cognizable, the Police have no powers to take up a case of their own accord. They have got to go to a Magistrate; then they have got to lodge a complaint, take an order from the Magistrate, take a search warrant if it is necessary, and then proceed to make enquiries. The result is that the information is conveyed to the person concerned, and the whole evidence disappears. In order that this may not happen, it is necessary to give this power to the Police to make enquiry of their own accord. That can be done only by making these cases cognizable. The danger is there that a very large power as a result of the offence being made cognizable goes into the hands of the ordinary constable, but Government have decided to issue executive instructions to all the Police Officers that this power is to be exercised only by the Police officers of and above the rank of Sub-Inspector of Police, so that they will never be exercised by ordinary constables. That will be the best safeguard against the misuse of powers by the lowest subordinates. I think that this provision is absolutely necessary, if we are to remove corruption from this Province, and I hope that this Bill will be passed unanimously by this House.

Mr. D. V. BELVI (Sholapur *cum* Belgaum *cum* Bijapur): Sir, I rise to oppose the second part of this Bill. We are all anxious, and I know that the Bombay Government is very anxious, to suppress corruption. Nobody says that it is a good thing. But we should at the same time remember that we are investing the Police officers with powers which, I feel, will prove most dangerous to the people. I have no confidence in the Police officers, and I am not going to rely upon the executive instructions which Government will issue to them. Why should Bombay

* The Bill was passed by the Legislative Assembly on September 3, 1946.

[Mr. D. V. Belvi]

alone be selected for amending the Criminal Procedure Code in this matter. It is a matter which affects the whole country. Is there no corruption in Madras ? Is there no corruption in the United Provinces ? I know the Bombay Government is making some effort now. That is a very good thing. But this is not the correct way to proceed in this matter. If these powers are given to the Police, all sorts of designs will be used and ordinary people, both official and non-official, will be brought into trouble by the Police.

I, therefore, submit that this provision should not be passed into law. So far as the offences under sections 161 to 165 are concerned, the present law is all right. They were wise law-makers who have made laws for the present generation. Those laws have worked very well in the country, and there is no reason why they should be changed. So far as the present Bill is concerned, a mere assurance on the part of the Government will not do. I am not going to give Government or Police more powers than are possessed by them at present. It is a question of great importance. Innocent men may be brought into trouble. The Police will do anything for securing evidence. They will extort money from ordinary people; they will hold out all sorts of threats. I am quite sure about this, and, therefore, I have to oppose the Bill as strongly as I can.

Mr. MORARJI R. DESAI: Sir, I cannot understand the feeling of the hon. Member Mr. Belvi that people of his own generation only were the wisest, and that the world should not progress at all. As the world progresses, laws are bound to be changed, and we have got to make such changes in law as may be found necessary.

Then, there is nothing to be ashamed of if Bombay wants to be in advance in such things. I do not see why we should always imitate others, why we should have the mentality of sheep. I cannot understand it at all. If the hon. Member feels that these offences are such that they must not be made cognizable at all, then there are less serious offences, petty thefts and misappropriation of property, which are cognizable, and I do not see why these offences should not be cognizable, and how the heavens are going to fall if they are made cognizable. If anybody is to be touched, it is the officer who is going to be touched, and the officer will be touched in order to safeguard the interests of the ordinary citizen. I cannot understand the opposition of the hon. Member, unless he has a suspicion that everything that is brought by this Government is going to be harmful to him.

Question "That the Bill be read a first time" put, and agreed to.

Mr. MORARJI R. DESAI: Sir, I beg to move that L. A. Bill No. XVII (A Bill to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay) be read a second time.

Question put, and agreed to.

Bill read Clause by Clause.

Clause 1 (*Short title*):

This Act may be called the Code of Criminal Procedure (Bombay Amendment) Act, 1946.

Dr. G. S. MAHAJANI (Poona *cum* Satara): Sir, I wish to move an amendment to this clause. My amendment is:

[Dr. G. S. Mahajani]

At the end of clause 1, add the following—

"It shall remain in force for a period of three years only."

Question proposed.

Dr. G. S. MAHAJANI : Sir, the Hon. the Home Minister was not present here in the earlier part of the day, when in the case of two other Bills amendments were tabled to the effect that the particular Acts should remain in force for three years only. In one case the Hon. Minister accepted my amendment in this House.

Now, Sir, the present Bill is, so to say, a legacy of the war. In this case, we are going to make an amendment to which an objection in principle has been taken by my hon. Friend Mr. Belvi. I do not think that the hon. Member Mr. Belvi stated that men of his generation were wise . He made a plea for the protection of civil liberties for which we all stand. To-day one party may be in power ; to-morrow another party may be in power ; and it is the duty of the Opposition to see that the liberties are maintained and that Government does not err in that respect.

We all recognise that this country generally, and this Province in particular, are passing through a very difficult period of time, when corruption is rampant. We all want to fight it out. Certainly desperate diseases require desperate remedies, and we shall certainly empower Government with the power that they ask from this House, but then, is there any objection to limiting this power to three years ? Let us have the experience of three years. Let us see, as my hon. Friend here apprehends, whether the liberties and rights of citizens are seriously endangered by these extra powers to the police. It may be that his fears are groundless ; it may be that the Minister is perfectly justified in his confidence. But I do not see any reason why this amendment should not be accepted. Perhaps, he will ; but, before I sit down, may I say that it will be a graceful gesture to the feelings of the Members on this side ? They fear that these powers may be misused, and if we have to make a beginning, we need not go the whole hog. The Hon. Minister for P. W. D., Dr. Gilder, accepted a similar amendment in respect of one of his Bills, and in the same spirit I hope the Home Minister also will accept this amendment.

Sir BEHRAM N. KARANJIA (Bombay City *cum* Bombay Suburban District) : Sir, I rise to oppose this amendment. I do not know how my hon. Friend Mr. Mahajani, an intelligent professor in a College in Poona, has brought in this amendment. In the earlier part of the day, when the House was discussing the Bill with regard to the levy of a surcharge, it was proper that an amendment limiting the period of this surcharge was moved and accepted by the Hon. Minister Dr. Gilder. Here, it is a question of amending the Criminal Procedure Code, and I do not think we can put a time limit. I do not think it has ever happened like that. Here the Hon. Minister wants that power should be given to the District Magistrates to transfer cases from the file of one Police Patil to that of another. I do not think there is anything wrong in that, and such powers should be given for all time. They should not be restricted to periods of 2 or 3 years. I think Government are perfectly right. I would go even further and suggest that these powers should be given to officers of and above the rank of, Sub-Inspectors, if Government are so pleased. These powers are absolutely essential and legitimate, and there is no need to put any time limit. I oppose the amendment.

Mr. R. N. MANDLIK : (Spoke in Marathi) : अध्यक्षमहाराज : या बिलाचा मुख्य उद्देश लाचलुचपतीला आळा बसावा हा आहे व मिनिस्टर साहेबांची अशी समजूत आहे कीं हा गुन्हा कॉग्निझेबल केला म्हणजे लाचलुचपतीला आळा बसेल.

The Hon'ble Mr. MORARJI R. DESAI : I never said that.

Mr. R. N. MANDLIK : But you meant that.

Mr. MORARJI R. DESAI : No.

Mr. R. N. MANDLIK : (Spoke in Marathi) : मला नाहीं वाटत कीं या एका बिलानें किंवा कांहीं गुन्हे कॉग्निझेबल केल्यानें लाचलुचपतीला आळा बसेल. या बाबतींत बेळवी साहेबांनीं सांगितल्याप्रमाणें सिव्हिल लिबर्टीज कमी होतील अशी माझी समजूत आहे. तेव्हां प्रोफेसर महाजनी यांनीं सुचविल्याप्रमाणें या बिलाचा काल तीन वर्षांपुरता मर्यादित करणें बरोबर ठरेल. या तीन वर्षांत आपल्याला पुष्कळ अनुभव येईल आणि लाचलुचपतीच्या प्रकारांना या बिलामुळें किती आळा बसतो तेंहि समजून येईल. त्यानंतर ही दुरुस्ती कायम ठेवावयाची कीं नाहीं याचा विचार आपण करूं असें ना. मंत्र्यांनीं म्हटलें तर फार योग्य होईल अशी मला आशा आहे. आतां या बिलानें पोलीसपाटलाच्या बाबतींत मात्र जी सुधारणा करण्याची योजना कली आहे तिला माझा पूर्ण पाठिंबा आहे. पोलीसपाटला पुढील खटले काढून घेण्याची सत्ता हल्लीं सरकारला नाहीं ती देणें जरूरीचें आहे. पोलीसपाटील बहुतेक अशिक्षित असतात व त्यांना सत्ता कशी वापरावयाची तें माहीत नसतें. कोंकणांत ज्या पोलीसपाटलांच्या पुढें खटले चालतात त्यांना स्वत:ला श्री सुद्धां लिहितां येत नाहीं. ते आंगठेवाले असतात. आपले खटले स्वत: चालविण्याची त्यांना अक्कल नसते. घाटावर मात्र अशी स्थिति नाहीं. तेथें सुशिक्षित पोलीसपाटील असतात आणि त्यांच्या पुढील खटल्यांत अन्याय होण्याचा संभव आहे म्हणून तो टाळण्याच्या या प्रयत्नाला माझी सहानुभूति आहे. परंतु मंत्रीसाहेबांनीं हा प्रयोग तीन वर्षांपुरता करून पहावा ही उपसूचना त्यांनी मान्य करावी अशी माझी विनंती आहे.

(Substance of the above in English:)

This Bill is not going to check corruption by making the offences cognizable. On the contrary, it will take away the civil liberties of the public. I, therefore, support the hon. Member Dr. Mahajani's amendment that this Bill should be in force only for three years, during which period we shall gain experience of the working of the Act and then consider whether the period should be extended. However, I agree with the proposal of Government in regard to the transfer of cases pending before the Police Patils. This is very essential because the Police Patils are mostly illiterate, and are, therefore, unfit to conduct such cases.

Mr. D. V. BELVI (Sholapur *cum* Belgaum *cum* Bijapur): Sir, I might tell you from my own experience, extending over a period of 51 years, that the Police are the most corrupt. The Hon. the Revenue Minister said that only the Police Inspectors and officers above that rank will be invested with these powers. I know of instances from my own District of high police officers who were corrupt. The Hon. Minister knows this well too. Especially the Indian police, the better educated they are the more corrupt they are. As a Magistrate for 12 years the Hon. Minister must have known police officers who brought cases before him and how they behaved. Very few people from the Police Department are honest. I, therefore, think that this experiment may be made for three years. If it proves successful then the period may be extended. The hon. Member Sir Behram Karanjia is not perfectly right in saying that it is a good principle that any measure should be introduced as a permanent one without any experiment, without any time limit placed on it.

But the Hon. Minister in charge of the Bill, to say the least, is always sticky. He will not change a comma even, and so there will be a fight between him and me. If you attach any importance to my experience of 51 years before I retired from the Bar, I request the House to kindly pass this amendment of the hon. Member Dr. Mahajani. Nothing will be lost, and to quote the phraseology of the Hon. the Revenue Minister, the heavens will not fall down. There is not going to be any harm at all if you accept this limitation of three years on the continuance of the Act. It will be a very good principle if you accept this amendment, which is a simple one. It should not be the principle that the laws passed by the Lower House should not in the least be tampered with in the Upper House. I, therefore, request this House to try this experiment at least for three years. Let us wait and see the results, as the heavens are not going to fall down, in the words of the Minister himself.

The Hon. the PRESIDENT: Does the Hon. Minister want to reply?

Mr. MORARJI R. DESAI (Minister for Home): Sir, if I do not reply, it will be said that I have turned a deaf ear to the arguments, and if I reply and oppose the amendment I shall be accused of stickiness. However, I must say frankly what I have to say.

It was very unfortunate that the hon. Member who moved this amendment should have brought in considerations of grace and other matters for getting this clause amended. Does he mean to say that every time an amendment is moved and is accepted by hon. Members on this side they would be considered graceful? If that be the presumption, it will be necessary to be very careful in accepting amendments, even if they are to be accepted. I do recognise that it is certainly the good luck of some people to be graceful, and it may be that I am not able to have that grace. But this is not a matter which should be decided by considerations of gracefulness or otherwise. This is a matter which has got to be decided on its merits. The considerations which applied in the case of the Electricity Bill were quite different: those powers are not going to be required after three years, or they could even be dispensed with two years hence. The present Bill stands on quite a different footing, and because the amendment to the Electricity Bill was accepted, it does not mean that it can be accepted in the case of the present Bill also. This is not a temporary measure which is required only for three years.

I do not think that corruption is going to be stamped out completely in three years. It will last perhaps as long as society lasts in some form or other. What

[Mr. Morarji R. Desai]

we can do is to minimise or reduce it. But for that purpose a long and continuous fight has to be put up, and, therefore, these powers are necessary for a long time to come. It is not something which can be accomplished within a period of three years. I do not see what experiment is necessary.

I do not want to quarrel with the hon. Member from Belgaum in respect of the attack he made on the Police. I do agree that in many cases they behave badly, but they are not worse than other sections of society. How do the lawyers behave? Many times they compromise with the Police, and not only have they defended them, but they have shown them the way to get round the clutches of law. It is no use merely blaming the Police. The Police will not remain what they are if society progresses, and we want to see Policemen as ideal servants of society. If the Police are allowed to continue to be what they were in the past, the popular Government will not be justified. If the popular Government fails in carrying out this reform they will be replaced by another popular Government. No popular Government can afford to keep a Police organisation which is irresponsible or which does not serve people. That is why we must not only look to the past, but we must also look to the future and see what we can do or what we have to do. We have to build up a future on the experience of the past. It is with this view that various legislations have to be brought in.

The hon. Member from Belgaum said I am very sticky, and that I am not prepared to change even a comma and much less accept the amendment. After all, I have got to stick to certain principles, and I cannot accept anything merely for the sake of compromise if it destroys the good purpose I have or the Government has in view. I have got to be firm in such matters and if I am accused of stickiness I am very sorry I cannot help it. It will be my unpleasant duty to displease the hon. Members opposite and I shall have to do it as a duty.

In this spirit, Sir, I oppose the amendment.

Amendment put, and negatived.

Clause 1 ordered to stand part of the Bill.

Clause 2 (Amendment of section 528 of Act V of 1898) ordered to stand part of the Bill.

Clause 3 (Amendment of Schedule II to Act V of 1898) ordered to stand part of the Bill.

The Preamble ordered to stand part of the Bill.

Mr. MORARJI R. DESAI: Sir, I move that Bill No. XVII of 1946 (A Bill to amend the Code of Criminal Procedure, 1898, in its application to the Province of Bombay), be read a third time and passed.

Question put, and agreed to.

The Hon. the PRESIDENT: The Bill is read a third time and passed.

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